

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

No. 5:09-CR-195-1-F

UNITED STATES OF AMERICA,
v.
VINCENTE LEON-GONZALES,
Respondent.

ORDER

This matter is before the court on the defendant's "Motion for Reduction of Sentence in Light of the November 1st 2010 Amendments to the U.S.S.G" [DE-21].

In the motion, the defendant states the following: "On November 1st, 2010 a new set of rules for the amendments will enter into effect and under 18 U.S.C.A. 3582(c)(2), I beg this Honorable Court to apply these amendments as a greater range of sentencing options to the Court with respect to offenders of certain crimes is now applicable." Mot. [DE-21] at p.1. The court assumes the defendant is referring to the guidelines promulgated by the Sentencing Commission pursuant to the Fair Sentencing Act of 2010, Pub. L. 111-220 ("FSA"). The new guidelines promulgated by the Sentencing Commission, however, have not been made retroactive, and the defendant therefore is not entitled to the relief he seeks.

Section 3582(c)(2) allows a court to modify an imposed term of imprisonment when the Sentencing Commission has subsequently lowered the defendant's guideline range "if such a reduction is consistent with the applicable policy statements issued by the Sentencing Commission." 18 U.S.C. § 3582(c)(2). The applicable policy statement can be found in U.S.S.G. § 1B1.10(a), which provides:

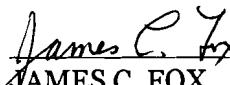
Where a defendant is serving a term of imprisonment, and the guideline range applicable to that defendant has subsequently been lowered as a result of an amendment to the Guidelines Manual *listed in subsection (c) below*, a reduction in the defendant's term of imprisonment is authorized under 18 U.S.C. § 3582(c)(2). *If none of the amendments listed in subsection (c) is applicable, a reduction in the defendant's term of imprisonment under 18 U.S.C. § 3582 is not consistent with this policy statement and thus not authorized.*

Id.(emphasis added). Therefore, if an amendment is not listed in U.S.S.G. § 1B1.10(c), it may not be applied retroactively on a § 3582(c) motion.

The FSA amendments to the advisory sentencing guidelines are not among those listed in U.S.S.G. § 1B1.10(c). The defendant, therefore, cannot rely on § 3582(c)(2) as a basis to reduce his sentence. Accordingly, his motion [DE-21] is DENIED without prejudice to renew his motion should he later become eligible to do so.

SO ORDERED.

This, the 6th day of December, 2010.



JAMES C. FOX
Senior United States District Judge